?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 24.10.2018

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

+Crl.O.P.(MD).No.12592 of 2018
and
Crl.M.P.(MD)Nos.5739 & 5740 of 2018

#Franklin Rousvelt ... Petitioner/Accused

Vs.

$M.Subramanian ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records, quash the same in S.T.C.No.516 of 2018 on the file of the Judicial Magistrate, Fast Track Court, Nagercoil.

!For Petitioner :Mr.N.S.Ramakrishnadass

^For Respondent :Mr.N.Sivakumar
for R.Murugan

:ORDER

This petition has been filed seeking to quash the proceedings in S.T.C.No.516 of 2018, pending on the file of the Judicial Magistrate, Fast Track Court, Nagercoil.

2.Heard learned counsel for the petitioner and learned counsel for the respondent.

3.The learned counsel for the petitioner would submit that the petitioner has borrowed a sum of Rs.20,00,000/~ (Rupees Twenty Lakhs only) from the respondent in the year 2016. For the said loan, the petitioner had given two cheques as security. The learned counsel would further submit that the entire loan was repaid back to the respondent and all the repayments were made through Bank transfer. In order to substantiate the same, the learned counsel for the petitioner also brought to the notice of this Court, the account statements for the period 2016~2018. The learned counsel for the petitioner would further submit that a notice was also given by this petitioner. Inspite of the same, cheques given as collateral security was misused by the respondent. In the said notice also, the petitioner had given all the details with regard to the repayment of the entire loan amount.

4.The learned counsel for the respondent would submit that the liability that is covered in the present cheque is completely different liability and therefore, two cheques dated 21.03.2018, were given by the petitioner and the same when deposited was dishonored, resulting in filing of the complaint under Section 138 of the Negotiable Instrument Act. The learned counsel would further submit that the issue that has been raised by the petitioner is factual in nature and this Court cannot go into the said issue in exercise of its jurisdiction under Section 482 Cr.P.C. This Court has carefully considered the submissions made by the counsel on either side. The issue with regard to the liability being already cleared by the petitioner and the issue with regard to two cheques given as security being misused by the respondent, are factual in nature and it falls within the realm of appreciation of evidence.

5.This Court does not find any ground to interfere with the proceedings, pending before the Court below and accordingly, this Criminal Original Petition is dismissed. The presence of the petitioner shall be dispensed with before the Court below and the petitioner shall be represented by a counsel. The petitioner shall be present before the Court at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The counsel representing the petitioner shall cross examine the witnesses on the same day they are examined in chief and the petitioner will not be questioned in the identify of the witnesses. The Court below is directed to complete the proceedings in S.T.C.No.516 of 2018, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

To

1.The Judicial Magistrate,
Fast Track Court,
Nagercoil.

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.